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C O N F I D E N T I A L SECTION 01 OF 02 HONG KONG 002493

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [HK](#) [CH](#) [PINR](#) [MC](#)
SUBJECT: UPDATE ON COVERT SURVEILLANCE AND WIRETAPPING
LEGISLATION: SLOW PROGRESS AND GROWING IMPATIENCE

REF: A. HONG KONG 0523
[1](#)B. HONG KONG 1656

Classified By: E/P Chief Simon Schuchat. REASONS: 1.4(b,d).

[1](#)1. (C) Summary: The government is becoming frustrated with the Legislative Council's (Legco) slow progress in scrutinizing a covert surveillance and wiretapping bill and has signaled that it may force a vote by August 2. On June 12, Secretary for Security Ambrose Lee called the progress "unsatisfactory" and said he might seek a special Legco session on August 2 to vote on the bill. While eventual passage of the bill is all but certain, the Government blames pan-democratic members of the Bills Committee for the slow progress and is attempting to increase pressure on them by warning of dire consequences if the legislation is not passed by the August 8 deadline. Pan-democratic legislators say they are moving as expeditiously as possibly given the complexity of issues. A complicating factor is the Court of Final Appeal's agreement to hear a judicial challenge to the lower court's February ruling granting the Government a six-month grace period to enact legislation (see ref a).

[1](#)2. (C) Comment: These are difficult issues for any modern society. Particularly after the Article 23 debacle, however, Hong Kong's democracy and civil rights advocates (as well as much of the general public) are extremely sensitive to potential infringement of their traditional rights and freedoms. The intense scrutiny of every word in this bill by pan-democratic legislators (whose ranks include many of Hong Kong's most prominent lawyers), and the drive to insert a judicial role into the process of authorizing surveillance, is further evidence that many democracy and civil rights advocates here see the court system as their final line of defense. End Comment and Summary.

Government Seeking Consensus, But Growing Impatient

[1](#)3. (C) While all sides appear to be working in good faith to enact covert surveillance legislation before the court-imposed grace period ends on August 8 (see ref a), the government is clearly frustrated with Legco's slow progress and has signaled that it may force a vote by August 2. On June 12, Secretary for Security Ambrose Lee, speaking on a radio program, said the Legco Bills Committee's progress in scrutinizing the legislation was "unsatisfactory." The committee has set a June 23 deadline for conclusion of its work, but thus far has completed only 12 of the bill's 65 clauses. Lee suggested that Legco might have to stay in session during its summer recess, which normally runs from mid-July to early October, to work on the bill. Lee also said he might ask Legco President Rita Fan to convene a special Legco session on August 2 to vote on the bill.

Committee member Philip Wong, who supports the government and is familiar with its plans, told us on June 14 that the government had decided to work right up to the deadline to gain the support of the pan-democratic camp. However, with or without such support, Wong predicted the government would force a vote by August 2, though they "don't want to do it unless absolutely necessary." Wong added that he had already cancelled his summer travel plans in anticipation of an extended session.

¶4. (C) The government has the power to demand an up or down vote on its bill at any time, and passage seems all but certain. Prior to such a vote, Legco members would have the right to offer amendments, but those amendments would require majority support from both the geographical and functional constituency halves of Legco. While the pan-democratic camp holds 18 of 30 geographic constituency seats, it has only 7 of 30 functional constituency seats, making amendment of the bill virtually impossible without government support. Both pro-government parties, the Liberal Party and the Democratic Alliance for the Betterment and Progress of Hong Kong (DAB), have already indicated their support for bill (see ref b).

"Bad Guys" Would Take Over

¶5. (C) The Government is also attempting to increase pressure on the pan-democrats by warning the public of dire consequences if the legislation is not passed by the August 8 deadline. "If we don't have this law in place when the six-month grace period ends, there will be a vacuum where law enforcement agents will not have the legislative backing to carry out their work," Lee said on the same radio program. He added ominously, "the bad guys will take over" if the

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legislation is not passed. Several pro-government media outlets echoed Lee's warning. The mass-circulation Oriental Daily News said in an editorial on June 13 that "Hong Kong's security system would collapse" and "the bad guys would do whatever they wanted" if Legco failed to pass the legislation by the deadline.

¶6. (C) Pan-democratic members of the bills committee are being blamed for the slow progress. During a May 25 session, Liberal Party legislator Selina Chow expressed exasperation with Democratic Party member James To for questioning the definitions of words like "judicial," "postal" and "install," according to the minutes of the meeting. To responded that "every word may be controversial. If the bill is not well drawn up, the scope can be extremely broad." At another meeting, To questioned Permanent Secretary for Security Stanley Ying at length about the meaning of "private places" where people would have a reasonable expectation of privacy and, therefore, covert surveillance would require authorization. He asked, for example, whether a golf course or a VIP room at a restaurant would be considered public places. Ying responded that if they were open to the public, then conversations would not be entitled to reasonable privacy, unless they were conducted at a whisper. Based on this type of questioning, Philip Wong told us the democrats were "intentionally dragging their feet" in order to have an issue for the July 1 march.

¶7. (C) Pan-democratic legislators, however, claim they are moving as expeditiously as possible, given the complexity of trying to strike the right balance between personal freedoms and security. Civic Party member Ronnie Tong has placed the blame on the Government, arguing that it took too long to produce draft legislation following the court rulings in 2005 which overturned the current covert surveillance regime. Pan-democratic legislators also point out that the bills committee has been meeting almost daily over the past several weeks, but they continue to find additional problems. For example, members say the bill would allow the Chief Executive to spy on his opponents since he is not considered a "public

officer" under the Government's interpretation of that term. They also charge that a number of terms in the bill are vague and over broad. The term "preventing crime," for example, which the bill lists as one justification for conducting covert surveillance, has broad coverage, said Civic Party member Margaret Ng. "What should the trigger point be? You need to state what the limitations are," Ng said.

Nobody Spoiling For a Fight

18. (C) Nevertheless, in comparison with other recent legislative battles in Hong Kong involving issues of personal freedom and liberty -- notably the controversy surrounding Article 23 legislation in 2003, and the debate over constitutional reform and a timetable for universal suffrage in late 2005 -- both sides appear anxious to avoid a rancorous confrontation. Philip Wong told us that, despite differences on various points in the bill, he believes that all committee members have accepted the overall concept of the legislation. Likewise, Emily Lau told us on June 14 that "members want to get on with it and get it done." She also said that, while serious differences of opinion still existed on important issues such as the definition of "public security," she believed the Government was working in good faith to address members' concerns. She added, in reference to the former Secretary for Security during the Article 23 debate, "Stanley Ying is definitely better than Regina Ip."

Another Factor -- Long Hair's Court Challenge

19. (C) Another wild card that could complicate an already confused situation is the judicial review launched by legislator "Long Hair" Leung Kwok-hung. Long Hair and another plaintiff are challenging the decision by High Court Justice Michael Hartman in February to delay for six months the effect of his ruling that the current covert surveillance regime had no legal basis, and that a decades-old wiretapping law was unconstitutional (see ref a). The Court of Final Appeal will hear the case on July 5.

Cunningham